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Legal Dept-

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Subject:— Opinions under the Charitable Endowments Act 1890

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Sd/-
17/9/55.

K.N.P.
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5.C.

RIN 6. 24/165
22/11/57

Submitted.

2. It appears that Sanskrit Pathanshala at Rajpipla was statred by public donations and subsequently handed over to the Rajpipla State for managment. After the merger of that State, under order of the Director of Public Instruction the Pathashala was ordered to be closed in June 1949 as it is not the policy of this Govt. to mainain pathanshala at Government cost and the number of pupils attending it were only six- After the closure shri Chandula l Vyas and others of Rajpipla represented thatthe Pathashala should be re-opened and the building funds thereof be handed over to the trustees. On a feference to the R.L.A. in his opinion No. 2159, dated the 8th February 1951 the R.L.A. held that there would be no objection to handing over the property of the Pathashala to such persons as have been validly appointed as trustees by a Vivil Court. Govt. accepted this advice and in R.D. letter Nis. S.S. No. 2850-E 16299 dated the 4th August 1951, Shri Chandulal vyas and three others were adrised to get themselves appointed as trustees by a Sivil Court as a condition precedent to the handing ovser of the property to them. Shri Chandulal vyas and other s have now represented to Govt. that the closure of the Pathashala is unlawful and therefore the status quo should first be restored. They have also resented being asked to get appointed as trustees by a Vivil Court as beingunfair. The R.D. considers that as this condition was imposed on the advice of the R.L.A. it cannot be withdrawn. Before Shri vyas is informed accordingly the papers are shown to the R.L.A.

K.M.P.
7.8.

LEGAL DEPARTMENT

sanskrit Pathshala Feipidia

The officers holding the amounts at present may be instructed to apply to the Government as the administering persons under section 4 of the Charitable Endowments Act, 1890, to vest the same in the Treasurer of Charitable Endowments and to have a schemes settled under section 5 for the administration of the funds. (cf. R.L.A's opini No. 8878, dated the 28th June 1950). In the scheme to b framed under the Act Government may appoint the applicant as trustees to administar the scheme.

Sd/- 24/4

Additional Secretary to Government.

U.R. to R.D. No. 6366, dated the 25th April 1952.

K.F.P.
7/6
A.C.

Office of the R.L.A.

The two funds "The Manser Nurse Fund" and "The L
Reay Fund for Nurses" are vested in the Treasurers of
Charitable Endowments and also being administered accord-
ing to the scheme settled under the provisions of the
Charitable Endowments Act, 1890. Under both the said
schemes the income is to be paid to the Administrator of
the Fund for being applied in traning and maintaining
nurses in the Jamsetji Jeejeeb hoy Hospital, Bombay.
Under both the scheme s the Honorary secretary and
Treasurer, N.J.Hospital Nursing Association, Bombay, is,
appointed the Administrator .

2. The schemes gives full latitude to the Administrat
in application of the income to the onjects of the fund
and it does not provide that he should consult Govern-
ment in the matter. If it is now proposed to take over
the administration of funds, it will be necessary to
modify the schemes. Under section 5 (2) of the Charitable
Endowments Act, 1890, any modification of an existing
scheme can only be made on the application and with the
concurrence of the person or persons acting in the
administration of trust. In ew- view of the Society's
contention, it is unlikely that its Secretary will make
the necessary application and therefore, it is not
possinle to take over the administration of the funds.

Sd/-
P.M.Lad
13/6

o.e. Remembrancer of Legal Affairs.

K.N.P.
7/6
4.C.

U.R. to L.S. G& P.H.D. No. 9975, dated the 14th June1952.

D.S. (coil) Reply may be :-

Education The view taken by the Director of ~~and~~ donation appears to be correct. The contribution of Rs. 2000 was intended to cover the expenses of the secon d dary Middle school children for two years on an experimental basis and that having been done Govt. would not be liab le to refurn the confntention to the villagers

Sd/- R.T. Katarki.
14/8

R.I.A? Sd/- P.H.Lad.
14/8

U.O.R. to E.D. No. 13537 of 14-8--1952.

K.M.F.
8/6
A.U.

Office of the R.L.A.

Charitable Endowments Act, 1890

Sections 4,8,& 10.

Bombay Public Trusts Act, 1950

Section 43.

Corakshaka Lottery Fund
disposal of-

The Corakshaka Lottery Fund appears to be a charitable endowment created under the Baroda Public Institutions Act, 1905, and vested in the Accountant General, Baroda who was apparently the treasurer under section 17 of that Act (Cf. R.L.A's opinion No. 1871 dated the 31st January 1952). The scheme for the management of the fund is contained in the order of the Dewan dated the 21st January 1920, and according to that scheme the disposition of the fund rests entirely with the Committee of the members mentioned in the application for settlement of the scheme.. On the integration of the Baroda State, the State Account ant General, has been replaced by the Deputy Accountant General and the endowment came to be governed by the Charitable Endowments Act, 1890. Under section 4(2) of this Act the treasurer of Charitable endowments is entitled to all documents of titles relating to the property vested in him and under section 8(2) is responsible for keeping separate account of each property when it consists of securities and to apply the property or income thereof in accordance with the vesting order or the scheme. Under section 19(1) the treasurer can transfer any property vested in him in compliance with a direction in that behalf issuing from the authority ~~who could now issue such~~ by whose order the property became vested in him. ~~vested in him.~~ The authority who could now issue such direction would be Government. Section 43 of the Bombay Public Trusts Act, 1950, provides that notwithstanding anything contained in the Charitable Endowment Act, 1890, the Charity Commissioner shall be deemed to be and to have always been the treasurer of the Charitable Endowments for the State of Bombay appointed under the provisions of the said Act and the property vesting in the said treasurer before the date on which this Act comes into

Act comes into force shall be deemed to vest in the Charity Commissioner as the Treasurer of Charitable Endowments; and the provisions of the said Act shall apply to the Charity Commissioner as a Treasurer of Charitable Endowments under the said Act. That being the postion Government may issue a direction to the Charity Commissioner under section 10(a) of the Charitable Endowments Act to get the security fo Rs. 1,15,800/- split up into one of Rs. 100,000/- and 15 G.P. Notes of Rs. 1000/- each and one G.P. Note of Rs. 800/- and to pay the sale proceeds of these G.P. Notes to the Gorakshak Committee for disposal. The second question does not survive.

Sd/- P.M.Mad
23/8

e.c. Remembrancer of Legal Affairs.

U.R. to F.D. No. 13884 dated the 26th August 1952.

K.N.P.
7/6
A.C.

Office of the R.L.A.

Major Harvey
Middle School,
Mandwa.
Transfer of-

If the School is maintained whether it be by Government or by Adarsh Kalwani Mandal, the condition of the donation about the maintenance of the School would be satisfied. There is however some substance in the contention that the donation of Rs. 6000/- having been accepted on the condition that the School would be named after donor, the School should have to bear the donor's name. The circumstances under which the School was renamed in 1933 as "Major O.E.L. Harvey Middle School , Mandwa Chundod" are not clear. The Educational Department may therefore call for the original records of the Ex-state underlying the donation and renaming of the School as suggested by the Director of Education and then refer the case again to the R.L.A. for opinion if necessary.

Sd/- P.M.Lad
11/10

U.R. to E.D. No. 16916/A dated the 13th October 52.

K.M.P.
7/6
4.C.

Office of the R.L.A.

Under the Charitable Endowments Act, 1890 , in order to vest in the Treasurer of Charitable Endowments any property already held in trust for a charitable purpose, an application under section 4(1) should be made to the Government by the person acting in the administration of the Trust. And upon such applicatio the Government may order by notification in the Official Gazette that the property is vested in the Treasurer of Charitable Endowments on the terms agreed to between the Government and the person or persons making the application.

The shares of the Imperial Bank of India are he in Trust by the Government of Bombay in pursuance of t provisions of the Deed of Settlement dated the 9th January 1849. The shares thus held in Trust would not authmatically vest in the Treasurer of Charitable Endowments on the coming into force of the Charitable Endowments Act, 1890. It will be necessary for the Accountant General who is at present holding the shar on behalf of the Government to make an application to the Government under section 4(1) of the Charitable Endowments Act for vesting shares in the Treasurer of Charitable Endowments Act for framing a scheme for the administration of the income of the fund and on th order of vesting being passed by Government, by virtur of section 43 of the Bombay Public Trusts Act, 1950, t fund would vest in the Charity Commissioner and thereb the Accountant General would be relieved of his duties in respect of the shares in question.

K.M.P.
7/6
L.C.

Sd/- P.M.Lad.

Q.S. Encumbrancer of Legal Affairs.

U.R. to F.D. No. 17670/E dated the 24th October 195

Office of the R.L.A.

There are no papers to show the circumstances under which the English School at Mandwa was renamed in 1933 as "Major C .W.L. Harvey Middle School Mandwa-Chandod." Presumably the change of name may have been done with the consent of the original donor Purani Dhanvantram Motiram. Even if it may not be so, the fact that he acquiesced in t change, would debar any one his behalf from disputing it now after a lapse of over 19 years and agitating that the School be renamed after him.

Sd/- P.M.Lad,
5/1

Asstt.Secretary of Legal Affairs,

U.O. to H.D. No. 268/A dated the 6th January 1953.

K.M.P.
7/6
A.C.

Office of the R.L.A.

Under the vesting order and Scheme dated the 21st November 1942, made under sections 4 and 5 of the Charitable Endowments Act, 1890, for the introduction of Land Improvement in dry areas in the State of Bombay, the income of the endowment fund mentioned in the Second Schedule to the Scheme has to be applied towards the objects mentioned in the First Schedule thereto. Clause 3 of the First Schedule provides that the income from the said endowment fund shall during the period mentioned in the said Order be applied in any for the service of the following charitable purposes or any one or more of them, namely :-

(a) the improvement and conservation of water supply either by digging fresh wells, building any tank or running water nearby or making reservoirs for the supply of individual or a group of villages

(b) land development including bunding, bothe major and field embankments construction, levelling terracing and afforestation;

(c) adoption of scientific "dry farming",

(d) systems of soil management and crops tillage (including improved varieties of crops and organisation); and

(e) the establishment of "demonstration centres"

in the case of each purpose within the province of Bombay. Clause 7 inter alia provides that the Governing Body shall have power to frame such subsidiary schemes or rules general or special for the application of the said income as are inconsistent with this scheme. The Governing Body of the Trust Fund, it appears, has paid a sum of Rs. 1, 45,053 out of the income of the Fund, for the implementation these model village schemes, a substantial portion of which intended to be expended over the construction of a "Multi purpose Hall" (for recreation of the villagers) and "Store" (godowns for storing the agricultrual products) at each of the three villages. The question raised for R.L.A's consideration is whether the proposed expenditure out of the income of the Endowment Fund over the Construction of a —

Multi-purpose Hall and a Store at each of the three villag would be permissimal;

2. The construction of a Mylti -purpose Hall and a Store would not fall under any of the sub-clauses (a) to (e) of Clause 3 of the First Schedule. It is true that under clause 7, subsidiary shcemes can be framed by the Governing body, but those schemes must not be inconsistent with the general shcems for which the endowment fund has been created As stated above the main object of the endowment is to effect land improvement in dry areas in the province of Bombay. The sunsidiary shcems must therefore be such as should aim at achieving the main orject of the scheme. The construction of a Store may be cunsidered as a subsidiary scheme inasmuch as it would help the cultivators to store the materials until they are marketed at the proper time. Such store would certainly tend to advance the economic improvement of the fultivators in dry areas, for the devehop ment of which the scheme has been evolved. It appears, therefore, that the construction of a store would be covered by clause (7) of the First Schedule. But, so far as the construction of a Multi-purpose hall is concerned, it is not clear why it is called 'Multi-Purpose Hall' then the object appears to be to merely provide recreation to the villagers. If it is merely intended for the recretation of the villagers, the expenditure over the multi-purpose hall the would not be covered by clause 7 of the First Schedule, as it cannot be considered as a subsidiary scheme for the improvement of land in dry areas. If, however, the multi-purpose hall is in any way intended to help the cultivators for improving their methods of cultivation or their agricultural progressit would be covered by clause 7 of the First shhedule. This point may be futher charified by the Agriculture and Forests Department before any final opirion can be expressed.

sd/- P.M.Lad
5/11

Remembrancer of Legal Affair

K.R.P.
7/6
4.C.

U.R. to

Office of ...

The assets of the society even after they are handed over to Government would remain impressed with a trust and have to be utilised for purposes referred to in section 1 of the societies Registration ACt, 1860. It would therefore not only be desirable but necessary to settle a separate and independent scheme for the administration of the Trust. For that purpose the President o the smart Victory Hospital Fund, Godhra may make an application to Govetnment under section 5 of the Charitable Endowments Act, 1890 for settling the scheme, whereaf ers under a vesting order under section 4(1) of this A the assets of the Society may be vested in the Treasurer of Charitable Endowments and appointemt of the Collecto of Panchmahals as the sole trustee or of a Committee consisting of the Collector of Panchmahals and others can be made under section 5 for for the administration of the trust property.

SD/- P.M.Lad
3/12

C.C. Memebrabcer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 20300/A dated 4th December 1952.

K.N.P.
7/6
4.C.